

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

This submission is made in response to the Final Office Action dated November 24, 2008 in connection with a Request for Continued Examination. Claims 1-23 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 12 and 23 are independent claims; the remaining claims are dependent claims.

On March 24, 2009 Applicants representatives telephoned the Examiner and agreed that the Examiner would contact the undersigned at the telephone number listed below in order to schedule an interview.

It should be noted that Applicants are not conceding in this application that those claims amended in this application are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution of this application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the claim.

Rejections under 35 U.S.C. § 112

Claims 1-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner asserts that the following claim language is unclear and indefinite: "...it is uncertain what the relationships are amongst "RFC" of line 2 [of claim 1], "individual tasks" of line 5 and "job" of line 8...i.e. it seems that RFC is composed of tasks, if so, jobs are also part of RFC?" *Office Action*, pp. 2. The Examiner then suggests that consistent names should be used.

Applicants respectfully disagree and incorporate their remarks submitted in the Amendment After Final of January 26, 2009 here. Nonetheless, Applicants have amended the claims herein solely in an effort to facilitate expeditious prosecution of this application. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections under 35 U.S.C. § 112.

Claim Rejections under 35 U.S.C. § 102

Claims 1, 12 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hayes (U.S. Patent Pub. No. 2002/0198923, hereinafter "Hayes"). Applicants respectfully request reconsideration and withdrawal of these rejections.

As previously explained, Applicants respectfully disagree with the Examiner's rejections. Thus, the remarks submitted in the Amendment After Final of January 26, 2009 are incorporated by reference here. With regards to the rejection for anticipation under 35 U.S.C. § 102, the Examiner is kindly reminded that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction."

W.L. Gore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Applicants respectfully reiterate that the Hayes clearly falls short of teaching or suggesting all the claimed limitations.

Nonetheless, Applicants have amended the claims herein solely in an effort to facilitate expeditious prosecution of this application. Claim 1 now recites, *inter alia*:

deciding whether or not an RFC should be done, *wherein the RFC comprises a set of tasks interrelated by temporal and location-specific dependencies*; for each RFC to be done, assigning individual tasks within each RFC to acceptable servers; for each RFC to be done, assigning a start time to said individual tasks; wherein the *set of tasks comprises hardware changes and/or software changes*; wherein the change window describes a period of time during which the RFC is to be done; *and wherein precedence constraints among tasks within the RFC are enforced*.

Claim 1 (emphasis added). The remaining independent claims contain similar limitations. Applicants respectfully submit that Hayes, *inter alia*, fails to teach or suggest the above quoted claim language. Again, Applicants respectfully submit that Hayes is concerned with implementing a single task, even if different “classes” of client devices are contemplated. This stands in stark contrast to the instantly claimed invention, which is clearly directed at implementing an RFC comprising “tasks interrelated by temporal and location-specific dependencies” for which “precedence constraints among tasks with the RFC are enforced.” Support for these amendments can be found throughout the specification, particularly at pp. 9.

Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. 103(a)

Claims 3 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of “A Duality Approach to Admission and Scheduling Controls of Queues” to Susan H. Xu (hereinafter “Xu”). Claims 4-7, 10-11, 15-18, 21-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of “Games, Critical Paths, and Assignment Problems in Permutation Flow Shops and Cyclic Scheduling Flow Line Environments” to Kiran (hereinafter “Kiran”). Claims 2, 8-9, 13, 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayes in view of Crawford et al. (U.S. Patent No. 6,456,996) (hereinafter “Crawford”). Reconsideration and withdrawal of the rejections is hereby respectfully requested.

Applicants again respectfully submit that the references fail to teach or suggest all the claim limitations. The Examiner is kindly reminded that “[w]hen determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art. Thus, obviousness requires a suggestion of all limitations in a claim. Moreover, as the Supreme Court recently stated, *there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *Ex parte H. Garrett Wada et al.*, pp. 7, Appeal No. 2007-3733 (BPAI January 14, 2008) (internal quotation marks and citations omitted) (emphasis in original) (reversing Examiner’s obviousness rejection).

Applicants respectfully reiterate their remarks of January 26, 2009 regarding these references by incorporating them by reference here. Moreover, Applicants respectfully submit the following.

Applicants respectfully submit that the art of record does not overcome the deficiencies of Hayes, as above. Therefore, Applicants respectfully submit that the art of record, even when considered in combination, fails to teach or suggest the limitations of the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections under 35 U.S.C. § 103(a).

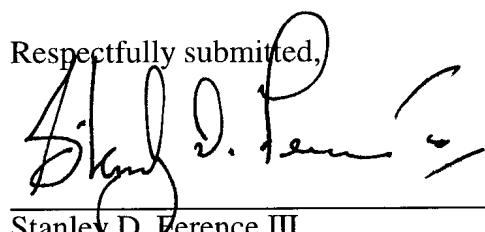
Applicants briefly note that certain dependent claims have been amended to ensure their conformity with the amended independent claims and to otherwise facilitate expeditious prosecution of this case.

Conclusion

In view of the foregoing, it is respectfully submitted that Claims 1, 12, and 23 fully distinguish over the applied art and are thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claims 1 and 12, it is respectfully submitted that the dependent claims are also presently allowable.

In summary, it is respectfully submitted that the instant application, including Claims 1-23, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, *the Examiner is invited to contact the undersigned at the telephone number listed below.*

Respectfully submitted,


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